

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:13-CV-159-FDW-DCK**

**JEFFREY RANDOLPH WATTERSON, and)
RANDOLPH ALEXANDER WATTERSON,)
Plaintiffs,)
v.)
WOODY BURGESS, et al.,)
Defendants.)**

ORDER

THIS MATTER IS BEFORE THE COURT on Plaintiff Randolph A Watterson's "Motion For Sanctions Against Defendant Green" (Document No. 157) filed on September 23, 2016. The pending motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and is ripe for disposition. Having carefully considered the motion, the record, and applicable authority, the undersigned will deny the motion, without prejudice.

On September 7, 2016, the undersigned issued an "Order" (Document No. 154) granting "Plaintiff Randolph A. Watterson's Motion To Compel Discovery" (Document No. 150) and requiring Defendant Green to provide complete discovery responses to Plaintiff on or before September 12, 2016. The Court specifically noted that Defendant Jason Green had failed to even respond to the motion to compel. (Document No. 154). In addition, the Court observed that Plaintiff's motion indicated that Defendant Green's counsel had previously represented that discovery responses would be provided no later than August 19, 2016. Id. (citing Document No. 150 p.2).

By the instant motion for sanctions, Plaintiff now seeks sanctions against Defendant Green for failure to provide responses to Plaintiff's discovery requests and for failure to abide by this Court's "Order" (Document No. 154). (Document No. 157).

Defendant Green, through counsel, filed a "Response In Opposition To Motion For Sanctions" (Document No. 165) on October 10, 2016. Defendant Green's response is not particularly enlightening. Defendant asserts that "there was confusion on counsel's part" regarding "where exactly discovery documents needed to be sent." (Document no. 165, p.2). Defendant then contends that "Defendant has in fact attempted to provide Discovery to the Plaintiff in a timely manner. If the materials never arrived, or perhaps arrived at an incorrect address, Defendant would ask that Plaintiff provide an accurate address." (Document No. 165, p.3). Defendant Green has not indicated any objection to the requested discovery, or that he is otherwise unwilling or unable to provide complete and full responses to the requested discovery – just confusion about where to send it. See (Document No. 157-1).

Plaintiff filed a reply brief on October 24, 2016, further indicating that Defendant Green has yet to provide discovery responses. (Document No. 174).

The undersigned is deeply concerned about Defendant Green's (and his counsel's) failure to comply with an Order of this Court. See (Document No. 154). The location and address of Plaintiff Randolph A. Watterson is one of the most certain features of this lawsuit – since it is undisputed that he is incarcerated and his mailing address is readily available on the docket for this case. Defendant offers no explanation or evidence regarding an alleged "attempt" to provide discovery to Plaintiff in a timely manner, nor is there any suggestion that Defendant Green's counsel reached out to the Court or the Avery/Mitchell Correctional Institution for clarification and/or to request additional time for compliance.

Despite Defendant Green's recent failures, the undersigned will deny the pending motion without prejudice and allow Defendant Green one more opportunity to provide full and complete discovery responses to Plaintiff Randolph A. Watterson. The Court will take Plaintiff's request under advisement and may award sanctions, including reasonable expenses, at a later date. In addition, Defendant Green and his counsel are respectfully advised that additional sanctions are likely if he fails to provide full and complete discovery responses as ordered herein. The Court could render a default judgment and/or treat Defendant's failure as a contempt of court, among other sanctions available. See Fed.R.Civ.P. 37(b)(2)

IT IS, THEREFORE, ORDERED that Plaintiff Randolph A Watterson's "Motion For Sanctions Against Defendant Green" (Document No. 157) is **DENIED WITHOUT PREJUDICE.**

IT IS FURTHER ORDERED that Defendant Jason Green shall serve complete discovery responses on Plaintiff Randolph A. Watterson at the address provided on the docket for this case, on or before **November 1, 2016**. Moreover, Defendant Green shall file a Notice with this Court on or before **November 1, 2016** confirming that discovery responses have been provided as directed herein.

SO ORDERED.

Signed: October 25, 2016



David C. Keesler
United States Magistrate Judge
